

Assembly Bill No. 2613

CHAPTER 451

An act to add Section 1812.117 to the Civil Code, relating to discount buying organizations.

[Approved by Governor September 10, 2004. Filed
with Secretary of State September 10, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2613, Haynes. Discount buying organizations.

Existing law requires every discount buying organization to maintain a bond issued by a surety company in the amount of \$20,000 in order to do business in California.

This bill would exempt an affiliate discount buying organization, as defined, that maintains a bond in the amount of \$250,000, if its parent, as defined, maintains a \$2,500,000 bond for all of its affiliates and a letter of credit, from the \$20,000 bond requirement. The bill would also exempt an affiliate discount buying organization from some of the requirements relating to maintaining funds in a trust account at a federally insured bank or savings and loan association, except as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 1812.117 is added to the Civil Code, to read:

1812.117. (a) An affiliate discount buying organization may, at its option, and with the express written consent of its parent, comply with the trust account withdrawal provisions set forth in subdivision (b), in lieu of those contained in subdivision (b) of Section 1812.116.

(b) The affiliate shall comply with the trust account provisions of subdivision (b) of Section 1812.116, except that:

(1) As to each buyer, during the first one-fourth or first six months of the buyer's membership period, whichever is shorter, funds representing no more than one-half of the contract price may be withdrawn from the trust account.

(2) During the subsequent one-fourth or six-month period of the buyer's membership period, whichever is shorter, the remaining balance of the contract price may be withdrawn from the trust account.

(c) To qualify for the provisions set forth in subdivision (b), (1) the affiliate shall maintain a surety bond of two hundred fifty thousand dollars (\$250,000), and (2) the parent shall maintain an aggregate surety

bond of two million five hundred thousand dollars (\$2,500,000) and a letter of credit, as set forth in subdivision (d), for all of its affiliates that qualify for the withdrawal provisions of subdivision (b). The bonds shall be issued by a surety company admitted to do business in this state. A copy of each bond shall be filed with the Secretary of State, with a copy provided to the Attorney General. The affiliate's bond shall be in lieu of the bond required by subdivision (a) of Section 1812.103. The surety bonds shall comply with the requirements of this section and shall be in favor of the State of California for the benefit of consumers harmed by any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, and the failure of the affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services, provided the bonds shall cover only pecuniary loss and not exemplary damages or treble damages permitted under subdivision (a) of Section 1812.123, and provided further the parent's bond shall not be drawn on until the affiliate's bond is exhausted.

(d) The parent shall continuously maintain and provide to the Attorney General as beneficiary an irrevocable letter of credit issued by a California state chartered bank or a national bank with its principal place of business in the State of California, in the amount of one million dollars (\$1,000,000), in a form satisfactory to the Attorney General. After the bonds described in subdivision (c) have been exhausted, only the Attorney General, by and through the Attorney General's deputy or assistant, may draw on the letter of credit for the satisfaction of any final judgments based on any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, or the failure of an affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services, provided the liability is established by final judgment of a court of competent jurisdiction and the time for appeal has expired or, if an appeal is taken, the appeal is finally determined and the judgment is affirmed, and provided further the letter of credit shall cover only pecuniary loss and not exemplary damages or treble damages permitted under subdivision (a) of Section 1812.123. The letter of credit shall provide that payment shall be made to the Attorney General upon presentation to the issuer of a sight draft stating only the amount drawn and signed by the Attorney General or by an Assistant or Deputy Attorney General. Any amount received by the Attorney General under the letter of credit shall be used exclusively to satisfy final judgments as described in this subdivision. The Attorney General may apply to the court for orders as desired or needed to carry out the provisions of this subdivision.



(e) In addition to other lawful means for the enforcement of the surety's liability on the bonds required by this section, the surety's liability may be enforced by motion after a final judgment has been obtained against an affiliate based on any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, or the failure of the affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services. The bond of the parent shall not be drawn on until the bond of the affiliate has been exhausted, as provided in subdivisions (c) and (d). The motion may be filed by the Attorney General, a public prosecutor, or any person who obtained the judgment without first attempting to enforce the judgment against any party liable under the judgment. The notice of motion, motion, and a copy of the judgment shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure. The notice shall set forth the amount of the claim, a brief statement indicating that the claim is covered by the bond, and, if the motion is to enforce liability under the bond provided by the parent, a statement that the bond provided by the affiliate has been exhausted or will be exhausted if the motion is granted. Service shall also be made on the Attorney General directed to the Consumer Law section. The court shall grant the motion unless the surety establishes that the claim is not covered by the bond or unless the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest. The court may, in the interest of justice, order a pro rata or other equitable distribution of the bond proceeds.

(f) (1) The bond required by subdivision (c) for an affiliate shall be continuously maintained by the affiliate until the date the affiliate ceases to make the election under subdivision (a) or ceases to engage in the business of a discount buying organization. The bond required by subdivision (c) for the parent shall be continuously maintained by the parent until the date all affiliates cease to make the election under subdivision (a) or all affiliates cease to engage in the business of a discount buying organization.

(2) Notwithstanding the expiration or termination of any bond required under this section, the bond remains in full force and effect for all liabilities incurred before, and for acts, omissions, and causes existing or which arose before, the expiration or termination of the bond. Legal proceedings may be had therefor in all respects as though the bond were in effect.

(3) The letter of credit required under subdivisions (c) and (d) shall be continuously maintained for a period of four years after all affiliates



cease to make the election under subdivision (a) or cease to engage in the business of a discount buying organization, provided the period shall be extended until there is a final judgment, as described in subdivision (d), entered in each action seeking relief that may be covered by the letter of credit if the action was filed before the expiration of the four-year period.

(g) Subdivision (a) of Section 1812.121 does not apply to a discount buying organization that offers substantially equivalent alternative at-home ordering service through other generally available channels of communications, such as the Internet, for the same categories of goods and services, provided the ordered goods are shipped either to the home or to a freight receiver within 20 miles of the buyer's residence at the time the buyer entered into the contract for discount buying services.

(h) For purposes of this section, the following terms apply:

(1) "Affiliate" or "affiliate discount buying organization" means a discount buying organization that is a subsidiary of a parent, as defined in paragraph (4), or operates under a franchise, as defined in paragraph (3), granted by a parent.

(2) "Consumer" or "buyer" means and includes a client or member of an affiliate discount buying organization.

(3) "Franchise" has the same meaning as in Section 31005 of the Corporations Code.

(4) "Parent" means a business entity that directly or indirectly has franchised or operated 25 or more discount buying organizations for 10 years or more.

